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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 385

STATE OF CALIFORNIA, PETITIONER

v.

HARRY TAYLOR, PETER A. CALUS, JAMES W. BREWSTER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Court of Appeals (R. 84–97) is reported in 233 F. 2d 251. The memorandum opinion of the District Court (R. 57–66, 71–72) is reported in 132 F. Supp. 356. The supplemental memorandum of the District Court (R. 71–72) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1956 (R. 97). A timely petition for rehearing was denied on June 7, 1956 (R. 98). The petition for a writ of certiorari was filed on September 5, 1956, and was granted on December 10, 1956

(R. 98). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

The question considered in this brief is whether the Railway Labor Act applies to the State Belt Railroad, a common carrier owned and operated by the State of California and engaged in interstate transportation.

STATUTE INVOLVED

The Railway Labor Act of May 20, 1926, 44 Stat. 577, as amended, 45 U. S. C. 151, *et seq.*, provides in part as follows:

> SECTION 1. When used in this Act and section 225 of Title 28 and for the purposes of said Act and section—
>
> First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, * * * and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": * * *.
>
> * * * * *
>
> SEC. 3. First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act [June 21, 1934], and it is hereby provided—
>
> * * * * *
>
> (i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements con-

cerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

* * * * *

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, * * *.

STATEMENT

The State Belt Railroad (Belt Railroad) parallels the San Francisco waterfront. It serves some 45 wharves and 175 industrial plants, and connects with freight car ferries, steamship docks, and three interstate railroads. It transports by its own engines all freight cars offered to it, many of which come from or are going to points outside the State (R. 53). Its

tariffs, which are filed with the Interstate Commerce Commission (R. 54), provide for a flat charge for moving cars between any two points on its line (R. 53).

The State of California owns the Belt Railroad, and the road is operated by the Board of State Harbor Commissioners for San Francisco Harbor (Board), composed of three commissioners appointed by the Governor (R. 52). The Board fixes the charges, and the revenues are deposited in the State Treasury and credited to the account of the San Francisco Harbor Improvement Fund (*ibid.*). Belt Railroad employees, who vary in number from 125 to 225, are appointed in accordance with the civil service laws of the State (R. 54).

On September 1, 1942, the Board entered into a collective bargaining agreement with the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen as the respective representatives of the Belt Railroad's locomotive engineers, firemen, and hostlers, and its yard engine foremen and helpers (R. 55). This agreement, which established rates of pay and working conditions for the railroad employees (R. 100–116), was observed by the parties until on or about November 13, 1951 (R. 45, 46). During this period, various disputes arising under the agreement were referred to the National Railroad Adjustment Board, which took jurisdiction upon the express basis that the Railway Labor Act applies to the Belt Railroad (R. 38, 42, 43–44, 55).

In 1948, the State of California instituted in the Superior Court of San Francisco County a declaratory judgment action against the two railroad brotherhoods

to determine the validity of the collective bargaining agreement of September 1, 1942. On appeal from a judgment for the defendants, the Supreme Court of California reversed, holding that the Railway Labor Act did not apply to the Belt Railroad and that the wages and working conditions of its employees were therefore governed by the State's Civil Service Act rather than by the 1942 collective bargaining agreement. *State* v. *Brotherhood of Railroad Trainmen,* 37 Cal. 2d 412, certiorari denied November 13, 1951, 342 U. S. 876.

Five employees of the Belt Railroad instituted the present action against the ten members of the National Railroad Adjustment Board, First Division, and its Executive Secretary (R. 5–6). The plaintiffs alleged that they had filed claims with the First Division pursuant to Section 3, First (i) of the Railway Labor Act, and that its five carrier members had refused, upon the ground that the Board was without jurisdiction, to consider or decide these claims (R. 7–9).[1] The prayer was for an injunction requiring action upon the claims (R. 10). The United States, answering on behalf of the First Division and its Executive Secretary, supported the complaint and prayer for relief (R. 12–13). The carrier members, answering through their own attorneys, opposed (R. 15–23), and the present petitioner, the State of California, intervened as a party defendant (R. 28–29). Both

[1] This refusal created an impasse because each division of the Adjustment Board is composed of an equal number of carrier representatives and employee representatives.

the United States and the State of California filed motions for summary judgment (R. 30, 31).

The District Court granted California's motion for summary judgment upon the ground that *State* v. *Brotherhood* had held that the 1942 collective bargaining agreement was invalid under California law irrespective of whether the Railway Labor Act applies to the Belt Railroad (R. 57–66). The Court of Appeals held that this Act does apply to the Belt Railroad (R. 89–91),[2] and remanded the cause to the District Court with directions to enter a decree granting the relief sought by the plaintiffs (R. 96–97).

This Court, in granting certiorari, invited the Solicitor General to file a brief as *amicus curiae* (R. 98).

ARGUMENT

THE RAILWAY LABOR ACT APPLIES TO THE BELT RAILROAD

Section 1, First, of the Railway Labor Act defines the carriers to which it applies as including "any * * * carrier by railroad, subject to the Interstate Commerce Act." The further words "and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier' " emphasize that the nature of the carrier operations is the sole determinative test of the application of the Act. Since the Interstate Commerce Act applies to all common carriers by railroad

[2] The further holding by the court that the collective bargaining agreement had been approved by the Department of Finance of the State and that it therefore met the requirements of California law in this respect (R. 92–96) is expressly excluded from the questions presented by the petition for certiorari (Pet. 9).

engaged in interstate transportation (49 U. S. C. 1 (1)) and since Belt Railroad is a common carrier engaged in interstate transportation, the Railway Labor Act, by its express terms, applies to the Belt Railroad. The Belt Railroad has filed its tariffs with the Interstate Commerce Commission (R. 54) and thus, by its own action, has recognized that it is subject to the Interstate Commerce Act. In addition, the Commission has so ruled. *California Canneries Co.* v. *Southern Pacific Co.*, 51 I. C. C. 500, 502–503; *United States v. Belt Line Railroad Co.*, 56 I. C. C. 121.

Petitioner's contention is, and must be, that although unambiguous words of the statute bring Belt Railroad under the Act, there nevertheless should be read into the Act an implied exception of any state-owned railroad. This Court dealt with and rejected a parallel contention in *United States* v. *California*, 297 U. S. 175, which held that the Belt Railroad is subject to the Safety Appliance Act.[3] This Court there said that the statute was "all-embracing in scope and national in its purpose" and "as capable of being obstructed by state as by individual action"; and that its language and objectives were too plain to be thwarted by any general rule of construction, such as that the enacting sovereign presumptively is not bound by its own statute. 297 U. S. at 186.

Congress, when enacting statutes regulating railroads or their employees, has consistently legislated for the industry as a whole, without regard to the

[3] The applicable sections of the Safety Appliance Act covered "any common carrier engaged in interstate commerce by railroad". 297 U. S., note 1, at 180.

identity of the owner or operator. We have already referred to the coverage of the Railway Labor Act and the Safety Appliance Act. The Employers' Liability Act also applies to "[e]very common carrier by railroad while engaging in [interstate] commerce." 45 U. S. C. 51. The Railroad Retirement Act and the Railroad Unemployment Insurance Act similarly apply to any carrier by railroad subject to Part I of the Interstate Commerce Act. 45 U. S. C. 228a (a), (m); 45 U. S. C. 351 (a), (b). And with the exception of the decision by the Supreme Court of California in *State* v. *Brotherhood, supra,* these various statutes have been held to apply to railroads owned or operated by a state. Safety Appliance Act (*United States* v. *California, supra*); Railway Labor Act (*New Orleans Public Belt R. R. Commission* v. *Ward,* 195 F. 2d 829, 831 (C. A. 5)); Federal Employers' Liability Act (*Maurice* v. *State of California,* 43 Cal. App. 270); Carriers Taxing Act of 1937, a companion measure to the Railroad Retirement Act of 1937, now codified in 26 U. S. C. 3231 (*California* v. *Anglim,* 129 F. 2d 455 (C. A. 9), certiorari denied, 317 U. S. 669).[4]

Petitioner, in contending that the Railway Labor Act should be construed as impliedly exempting any railroad owned and operated by a state, urges that such construction would accord with the action of Congress in expressly exempting employees of the

[4] See, also, *California* v. *United States*, 320 U. S. 577, 585–586, holding that the Shipping Act of 1916, which covers "any person" furnishing wharfage or other terminal facilities in connection with a common carrier by water, applies to wharfage and terminal facilities owned and operated by a state or a municipality.

United States or of a state from certain federal statutes governing employer-employee relationships (Pet. Br. 32–35). The statutes cited—the Labor Management Relations Act, the War Labor Disputes Act of 1943, the Fair Labor Standards Act, and the reemployment provisions of the Universal Military Training and Service Act—cover broad fields of employment. We submit that the policy pursued in such legislation is hardly persuasive that Congress, which wrote no comparable exception into the Railway Labor Act, nonetheless intended one when it dealt with the employer-employee relationship in the railroad industry.

Railroading is, as to such relationship, a singular industry; it is a state within a state and has its own customs and vocabulary. Garrison, *The National Railroad Adjustment Board: A Unique Administrative Agency,* 46 Yale Law Journal 567; 568–569. Congress not only has carved this industry out of the Labor Management Relations Act, but it has provided, by the Railway Labor Act, techniques peculiar to that industry. These include determination of grievances and disputes as to the interpretation of collective bargaining agreements by the National Railroad Adjustment Board (45 U. S. C. 153); invocation of the aid of the National Mediation Board in settling disputes concerning changes in wages and working conditions (45 U. S. C. 154–155); regulation of the making of arbitration agreements and court enforcement of executed agreements (45 U. S. C. 158–159); and Emergency Boards appointed by the President with a required

standstill in the conditions giving rise to the dispute until after such Board has reported (45 U. S. C. 160).

We submit that it is significant that the collective bargaining agreement which California made with the two brotherhoods (R. 100–116) deals almost exclusively with working conditions, or employees' rights or duties, incident to the special circumstances of railroad operation. Just as Congress in enacting the Safety Appliance Act had reason to protect railroad employees against unnecessary injury whether the railroad was owned by a state or private corporation, so it might reasonably conclude that railroad employees should have the right to negotiate with management with reference to wages and working conditions through union officers who are intimately acquainted with the problems, traditions, and conditions of the railroad industry, whether the railroad is operated privately or by a state agency. Congress might well have deemed this system more advantageous, both for the owning state and for its railroad employees, than application to these employees of a civil service system necessarily framed in relation to totally different types of work and employment. In any event, it was reasonable for Congress, recognizing that interconnecting railroads form an integrated national system and that the railroad brotherhoods are national in scope, to conclude that a uniform method of approaching and dealing with problems relating to wages and working conditions would minimize conflict and disharmony, would tend to eliminate inequities and would promote a desirable mobility within the railroad labor force. Congress

could pursue such an objective, we submit, on a comprehensive basis, that is to say, without excepting any railroad engaged in interstate transportation.

Petitioner appears to contend (Pet. Br. 36–38) that collective bargaining and collective bargaining agreements are repugnant to or inconsistent with accepted concepts of public employment. It is appropriate, initially, to view this contention in perspective. The Belt Railroad was operated for more than nine years—from September 1, 1942, to November 13, 1951—upon the basis that it was subject to the Railway Labor Act (*supra,* p. 4), and no showing has been made that such operation gave rise to legal or practical difficulties. Moreover, application of the Act to the Belt Railroad affects less than 3/10 of 1% of the State's employees.[5] It is also to be noted that railroading is an activity in which states rarely engage and then, so far as appears, only in operating short-line belt, water-front railroads.

The Railway Labor Act neither permits nor forbids strikes, nor does it compel the making of a bargaining agreement. The provisions of the Act here pertinent merely give employees the right to organize and select representatives free from employer interference and to negotiate through their representatives with reference to terms and conditions of employment; impose on both employer and employees the duty to con-

[5] The Belt Railroad has from 125 to 225 employees (R. 54), while the State of California has some 69,500 employees. We derive the latter figure from the statement made in the *amicus curiae* brief of California State Employees' Association (p. 3) that it has a membership of 59,142, and that its membership is approximately 85% of those eligible.

State employees before the Legislature, the State Personnel Board, the various departments, in the courts, administrative agencies and otherwise. Included in the above is continued representation for increased pay, better working hours and conditions, improved sick leave and vacation, liberalization of the State Employees' Retirement System, prevention of inroads into and breakdown of the State Civil Service System, individual representation on grievances. In brief the Association does for the California State employees what the Railroad Brotherhoods do for their members who are in private employment.

Throughout the past 26 years, the Association has been the almost exclusive representative of California's employees. This has been recognized by management:

> "Management and employees must meet problems together with sound judgment, fairness, and confidence to have an effective personnel program. The California State Employees' Association, representing a large majority of the State's working force, has played a significant role in the development of California's program. It was largely responsible for creation of the retirement system and for securing the addition of Article XXIV to the State Constitution. Although aggressive in the interests of its members, the Association has maintained a tradition of making its proposal conform to the long-range interests of good State Government. It has been a constructive force." (Twenty-first Biennial Report of the California State Personnel Board, page 20.)

Enlightened management, a progressive attitude on the part of the California Legislature and the State's executive officers, and the liberal political attitude of the people of the State have coupled with the efforts of

fer in attempted settlement of grievances; and permit reference of unsettled disputes to the National Railroad Adjustment Board, each division of which is composed of an equal number of carrier and employee members.

What is really at stake in this case, therefore, is whether Congress intended that collective bargaining, as fostered and protected by the Railway Labor Act, should apply to a railroad of the character of Belt Railroad. And, since the language of the statute plainly includes the railroad, the burden is on petitioner to show that Congress intended to exclude from the Act any railroad owned and operated by a state.

Collective bargaining with reference to public employment is no rarity. For example, both the Tennessee Valley Authority (see 16 U. S. C. 831 (b)) and Inland Waterways Corporation (see 49 U. S. C. 151) have contracted with employees as to wages and conditions of employment. Rhyne, *Labor Unions & Municipal Employe Law,* 141, 143, 437, 458. King, *The TVA Labor Relations Policy at Work.* The Government Printing Office (see 5 U. S. C. 664 (1946 ed.)) also sets wages after negotiating with its employees. Agger, *The Government and Its Employees,* 47 Yale Law Journal 1109, 1112. See, also, the analysis of 21 representative agreements covering employees of public bodies in Bureau of National Affairs, 18 Labor Relations Reference Manual 46.

Petitioner contends that application of the Railway Labor Act to a state-owned railroad raises a serious constitutional question, and that, to avoid constitu-

the Association to establish the finest civil service system in the world.

CONTENTIONS OF THE ASSOCIATION IN THIS CASE

The Association contends that the employment rights of the employees of the Railroad who are members of the Association and whom it represents in filing this brief amicus curiae are adversely affected by the existence, operation and application of the contract and its provisions and that the contract is illegal because:

1) Their rights, benefits and privileges as State employees are less under the provisions of the contract than under the State Civil Service Act;

2) The existence, operation and application of the contract has resulted in a lack of uniformity in granting employment rights, benefits and privileges as between the various State employees at the harbor and otherwise and therefore is discriminatory;

3) That the Civil Service employees are unwillingly and involuntarily brought under the provisions of the contract and will be unwillingly and involuntarily working under the provisions of the contract, that they at no time consented to the making of an illegal contract or one that discriminated against them;

4) That the lack of uniform treatment and status among the various State employees and the harbor employees because of the contract has adversely affected the working morale of State employees and if the contract is put back in force and effect it will continue to have an adverse affect upon the morale of harbor and other State employees.

tional doubts, the Act should be interpreted as not embracing such a railroad (Pet. Br. 51–55, 60–61). In our view, the short answer to these contentions is that *United States* v. *California,* 297 U. S. 175, puts at rest the constitutionality of the Railway Labor Act as applied to the Belt Railroad. On the issue of constitutionality, we see no valid distinction between application of the Railway Labor Act to the Belt Railroad and application of the Safety Appliance Act to that road. In *United States* v. *California,* this Court said that the State, although acting in its sovereign capacity in operating the Belt Railroad, necessarily so acted "in subordination to the power to regulate commerce, which has been granted specifically to the national government" (297 U. S. at 184), and that "California, by engaging in interstate commerce by rail, has subjected itself to the commerce power, and is liable for a violation of the Safety Appliance Act, as are other carriers" (297 U. S. at 185). In our view, the principle is no less applicable here.

CONCLUSION

We respectfully submit that the judgment of the Court of Appeals should be affirmed. If the Railway Labor Act is held to apply to Belt Railroad, we believe further that the cause should not be remanded for trial as to the validity of the collective bargaining agreement under the civil service laws of the State, as petitioner has suggested (Pet. Br. 71). This agreement concededly conforms to the provisions of the Railway Labor Act and that Act, if applicable, vali-

dates the agreement irrespective of the provisions of the civil service laws of California.

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